TAX TREATMENT OF HOUSING BENEFITS FOR U.S. EMPLOYEES AT THE UNITED NATIONS

Scheduled for a Hearing

Before the

SUBCOMMITTEE ON SELECT REVENUE MEASURES

of the

COMMITTEE ON WAYS AND MEANS

on December 14, 1987

Prepared by the Staff

of the

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the present-law treatment of housing benefits provided to employees and proposed changes with respect to the treatment of housing benefits for certain U.S. employees at the United Nations.

The Subcommittee on Select Revenue Measures of the House Committee on Ways and Means has scheduled a public hearing on December 14, 1987, on the tax treatment of such housing benefits for U.S. employees at the United Nations. The Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (H.R. 1777), now in conference, includes provisions relating to housing or housing allowances for certain U.S. representatives and staff at the United Nations.

The first part of the document is a brief summary. The second part provides an overview of the present-law tax treatment of housing benefits. The third part describes the tax-related provisions in H.R. 1777, as proposed in conference on the bill.

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[1] This document may be cited as follows: Joint Committee on Taxation, Tax Treatment of Housing Benefits for U.S. Employees at the United Nations (JCX-25-87), December 11, 1987.

I. SUMMARY

Gross income for purposes of computing Federal income taxes generally includes income received by a taxpayer in any form, including in-kind payments. Certain types of employer-provided fringe benefits, including certain housing benefits, are specifically excluded from an employee's gross income. Additionally, in some circumstances, lodging and other expenses incurred by a taxpayer while away from home in pursuit of a trade or business may be deductible for Federal tax purposes. A proposed amendment to the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (H.R. 1777), now in conference, would specifically exclude from gross income certain housing benefits provided to individuals employed by, or assigned to, the United States Mission to the United Nations.

II. PRESENT-LAW TAX TREATMENT OF HOUSING BENEFITS

Overview of tax treatment of housing benefits

Gross income for purposes of computing Federal income taxes generally includes income received by a taxpayer in any form, whether in money, property, or services. Certain employer-provided fringe benefits, however, are specifically excluded from an employee's income for income and employment tax purposes. For instance, section 119 of the Internal Revenue Code of 1986 ("the Code") provides that an employee may exclude from gross income the value of lodging furnished to the employee and certain family members if: (1) the lodging is furnished on the employer's business premises, (2) the lodging is furnished for the convenience of the employer, and (3) the employee is required, as a condition of employment, to accept such lodging.

In certain circumstances, lodging provided to an employee may be excludable from gross income under section 132 of the Code, which provides that property or services provided by an employer to an employee are excludable from the employee's gross income to the extent that, if the employee paid for such property or services, such payment would be allowable as an ordinary and necessary business deduction under section 162. The latter provision allows deductions for ordinary and necessary business expenses incurred by a taxpayer while away from home in pursuit of a trade or business.

With respect to the issue of whether away-from-home housing or other living expenses can be considered to be deductible business expenses as opposed to nondeductible personal expenditures, the IRS has ruled that if an employee accepts a temporary work assignment away from his or her regular place of employment which is expected to last for less than two years, then, depending on the particular facts and circumstances, the employee may be entitled to deduct living expenses incurred at the temporary place of employment.[2] If, however, the assignment away from the employee's regular place of employment is expected to last for longer than two years, the IRS has taken the position that the work assignment will not be considered temporary and, therefore, the employee cannot deduct such living expenses. Under such circumstances, the IRS considers such living expenses as personal expenses which generally are not deductible for Federal income tax purposes. (See Code sec. 262.) Thus, if an employer provides lodging to an employee

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[2] See Rev. Rul. 83-82, 1983-1 C.B. 45.

who accepts a temporary work assignment away from the regular place of employment which is expected to last less than two years, then, depending on the particular facts and circumstances, the employee may be entitled under section 132 to exclude the value of the lodging when computing gross income.[3] Any available exclusion under that section would not apply, however, to the value of any lodging furnished to members of the employee's family other than the lodging furnished to the employee.

Lodging or living allowances may also be excludable from gross income under other Code sections that govern the tax treatment of United States citizens and residents who accept work assignments in foreign countries.[4] In particular, section 912(1) provides that civilian officers and employees of the United States Government are not required to include in their gross income amounts received as living allowances under certain statutory provisions that apply to government officers and employees stationed abroad.

Department of State housing benefits

The Department of State is authorized to provide housing allowances to certain employees stationed in foreign countries. Such allowances generally are excludable from the employee's gross income under Code section 912. For many years, the Department of State also has provided housing allowances (and in some cases free housing) to some employees of the staff of the United States Mission to the United Nations, located in New York City. Authority to provide such housing allowances is contained in 22 U.S.C. sec. 287e-1, which provides that up to 50 employees of the staff of the United States Mission to the United Nations who are "required because of important representational responsibilities to live in the extraordinarily high-rent area immediately surrounding the headquarters of the United Nations" can receive an allowance to compensate for the portion of expenses necessarily incurred for quarters and utilities which exceed the average of such expenses incurred by typical, permanent residents of New York City with comparable salary and family size. In addition, each Delegate and

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[3] If, under such circumstances, the employer were to provide the employee a monetary allowance to cover living expenses incurred at the temporary place of employment, then the allowance would be includible in the employee's gross income. The employee may be able to claim a deduction under section 162 for some or all of such living expenses incurred while away from home in pursuit of the employee's trade or business.

[4] See Code sec. 911 and 912.

Alternate Delegate of the United States to any session of the General Assembly of the United Nations who is not a permanent member of the staff of the United States Mission to the United Nations may be provided an allowance to compensate for necessary housing and subsistence expenses incurred with respect to attending any such session.[5]

Housing allowances provided to individuals assigned to the United States Mission to the United Nations are not excludable from income under Code section 912, because that section applies only to Government personnel assigned to overseas posts. Moreover, the exclusion provided by section 119 would be applicable only if housing provided were deemed to be on the premises of the employer, i.e., the United States Mission to the United Nations. Under IRS interpretations, sections 132 and 162 likewise would not provide a basis for excluding the value of the lodging (or for allowing a deduction for any housing allowance actually spent on lodging) if the employee expected to remain in New York City for longer than two years (which is often the case) or if certain other facts or circumstances were present.[6]

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[5] Such housing allowances provided to members of the staff of the United States Mission to the United Nations are the only housing allowances provided to Department of State personnel assigned to posts within the United States.

[6] ~~See~~ Rev. Rul. 83-82, supra.

III. PROPOSED AMENDMENTS TO HOUSING ALLOWANCE PROVISIONS AND CODE SECTION 912 (H.R. 1777)

Explanation of Provisions

The Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (H.R. 1777), now in conference, may revise the types and amounts of housing allowances and other housing benefits that may be received by individuals employed by, or assigned to, the United States Mission to the United Nations. A proposed conference substitute to that Act would amend 22 U.S.C. sec. 287e-1 to provide that the Representative of the United States to the United Nations, the Deputy Representative, Delegates and Alternate Delegates of the United States to a general session of the United Nations, and four other ambassadorial rank representatives to the United Nations would be eligible to receive either housing allowances (ranging up to $6,800 per month in the case of the Deputy Representative, and with no statutory limit for the Representative and Delegates) or the use of housing leased by the Department of State (at a cost which may not exceed the allowable housing allowance). In addition, 44 other individuals assigned to the staff of the United States Mission to the United Nations on a temporary basis would be eligible to receive housing allowances in amounts up to $3,300 per month for a period of up to three years, unless a longer period is allowed by the Secretary of State.[7]

The proposed conference substitute further provides that, with the exception of the Representative of the United States to the United Nations and Delegates and Alternate Delegates to any session of the General Assembly of the United Nations, an individual receiving a housing allowance or living quarters leased by the Department of State would be required to contribute not less than 10 percent of the individual's gross salary for the housing costs while assigned to the United States Mission to the United Nations. The housing allowances could be used only to rent (not to purchase) living quarters for the individual receiving the allowance and members of such individual's family forming part of the household.

With respect to the tax consequences arising from such housing allowances, the proposed conference substitute would specifically amend Code section 912 to provide that the housing benefits (either housing allowances or free housing) provided to an individual employed by, or assigned to, the

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[7] As an alternative, the Department of State could lease, under terms determined by the Secretary to be advantageous to the Department, up to 10 living quarters to be made available to individuals eligible for housing allowances.

United States Mission to the United Nations would be excluded from the individual's gross income.

Effective Date

The proposed amendment to section 912 would apply retroactively and prospectively to housing benefits received both before and after the date of enactment.